IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 880 OF 1992

Shri Sumersing Ganpatsingh Pardeshi ..Petitioner

Vs.

Karmala Taluka Education Society, Karmala, and ors. ..Respondents

Mr. A.M. Joshi and Mr. P.D. Ghuge for petitioner.

Mr. Rahul Nerlekar h/f Mr. K.Y. Mandlik for respondent no.1.

Mr. P.D. Pise h/f Ms. A.R.S. Baxi for respondent no.2.

Mr. A.M. Kulkarni h/f Mr. A.A. Kumbhakoni for respondent nos.7, 10, 11 and 12.

CORAM: B.H. MARLAPALLE, J.

Date : August 30, 2006.

ORAL JUDGMENT:

1. This petition assails the Judgment and Order dated 18/9/1991 passed by the School Tribunal, Pune Region, Pune thereby dismissing Appeal No.35 of 1989 filed by the petitioner challenging the promotion of the present respondent no.2 to the post of Head Master of Mahatma Gandhi High School, Karmala with effect from 22/2/1989. Hence this petition is treated as one filed under Article 227 of the Constitution.

2. Admittedly, during the pendency of this petition, the petitioner has retired on 31/7/2000 and the respondent no.2 on 31/7/1997. The post of Head Master, as at present, is occupied by a new incumbent appointed as per the Rules and though the petitioner was in service as on 31/7/1997, his claim for promotion to the post of Head Master was not considered till he retired.

3. In his appeal before the School Tribunal, it was the case of the petitioner that in the seniority list of all the teachers in the M.G. High School, his name was at Sr.No.11, whereas the name of the respondent no.2 who was promoted to the post of Head Master, was at Sr.No.15 and the management had brought pressure on all the 14 senior teachers, including the petitioner himself and obtained their refusal to accept the promotion to the said post. This action of the management was illegal and in any case as per him, the first 10 teachers above him were not interested in accepting promotion to the post of Head Master and, therefore, he being the next senior-most teacher, he ought to have been considered. His claim was

illegally denied and under pressure he was made to sign some statement and thus the promotion granted to respondent no.2 was illegal and void ab-initio.

4. The management filed an affidavit in reply and opposed the appeal. The School Tribunal dismissed the appeal by the impugned order on three grounds, namely, (a) the appellant failed to place on record the names of 10 senior teachers above him, (b) the appellant was not the senior-most Head Master who could legitimately put-forth his claim for the said post and (c) it was not known whether the 10 senior teachers had voluntarily given their no objection or relinquished their claim to the post of Head Master or there was any act of force and more so they were not before the tribunal. On these grounds the Tribunal held that the appeal was premature and not maintainable. It also noted that another teacher by name Mr. Vittal Hazare who was much senior to the petitioner had already moved Appeal No.88 of 1989 and claimed promotion to the post of Head Master and in any case the said appeal was pending.

5. While granting Rule, the prayer for interim

relief was not considered and by way of amendment the petitioner has placed on record a copy of the common judgment decided in Appeal No.88 of 1989 and Appeal No.167 of 1991. By the said Judgment dated 20/4/1993 Appeal No.88 of 1989 came to be dismissed and thus the claim of Mr. Hazare stood rejected for the post of Head Master. Whereas Appeal No.167 of 1991 which was filed by the present respondent no.2 came to be allowed and he continues to hold the post of Head Master.

6. Mr. Joshi the learned counsel for the petitioner submitted that all other 10 senior teachers have been impleaded as respondent nos.3 to 12 in this petition and the petitioner as well as all the respondents-teachers by now retired from service on attaining the age of superannuation. However, the petitioner had rightful claim to the post of Head Master as he was senior to respondent no.2 and, therefore, as per Mr. Joshi this petition deserves to be allowed by giving consequential benefits which go with the post of Head Master till the petitioner attained the age of superannuation.

7. The whole controversy in all the appeals either filed by the petitioner or other teachers revolved around the main issue of inter se seniority of the trained graduate teachers. The petitioner relied upon some seniority list which was allegedly published by the Head Master and he claimed that he was at Sr.No.11 and the respondent no.2 was at Sr.No.15 and thus junior to him. The management in its detail written statement refuted this and contended that the seniority list relied upon by the petitioner was made by the Head Master and it was illegally drawn. The management pointed out in its written statement before the School Tribunal in para 9 that the respondent no.2 was a trained graduate teacher in the year 1968 and the petitioner having joined on 9/6/1969 was certainly a junior teacher to respondent no.2. The School Tribunal did not deem it appropriate to consider the main issue of inter se seniority and dismissed the appeal on the above mentioned grounds as premature and not maintainable. The issue of seniority is, therefore, required to be considered in this petition.

8. Mr. Hazare who had filed Appeal No.88 of 1989

while replying to one of the civil applications moved by the petitioner has placed on record the seniority list of all the trained graduate Assistant Teachers as in June 1997. It is evident and which is not disputed that the respondent no.2 obtained his STC qualification in the year 1962 and he joined as Assistant Teacher in the very same year. He obtained his B.A. degree in 1968 and B.Ed. decree in 1971. As per the petitioner, the respondent no.2 having obtained the degree of B.Ed. in the year 1971, he could be treated to be a trained graduate Assistant Teacher only from the year 1971 and he would come in category "C" under Schedule "F" to the M.E.P.S. Rules, 1981 only in the year 1971 or after completing 10 years of service from 1962 onwards. The petitioner having joined on 9/6/1969 as a trained graduate Assistant Teacher claims to be senior to respondent no.2. This presumption is not supported by the Rules.

9. It is not the petitioner's case that after the M.E.P.S. Rules were brought into force, the seniority list of all Assistant Teachers was finalised under Rule 12 and in the said list he was shown senior to the respondent no.2. The petitioner relied upon the

so called seniority list published by the Head Master who, as per the management, was his close relation and the management disputed the said seniority list in its written statement submitted before the School Tribunal and emphasised that respondent no.2 was senior to the petitioner. Rule 6 of the M.E. P.S. Rules states that the minimum qualifications for the posts of teachers in the primary schools shall be as specified in Schedule "B". Clause II of Schedule "B" states that for appointment as trained teachers in secondary schools the following qualifications are laid down:-

(i) A Bachelor's degree in Teaching or Education of any statutory University or a qualification Recognised by Government as equivalent thereto;

(ii) A Teaching Diploma of any statutory University, if a person holding it is appointed for the first time before the 1st October, 1970 and continues to serve as a teacher with or without break after that date.

(iii) A Secondary Teachers' Certificate of the

Education Department of Maharashtra State, if a person holding it is appointed for the first time before the 1st October, 1970 and continues to serve as a teacher with or without break after that date.

(iv) A Diploma in Education of the Graduates Basic Training Centres.

. As noted earlier, the respondent no.2 with his STC qualification came to be appointed as an Assistant Teacher for the first time with effect from 20/6/1963 and he obtained his B.A. decree in the year 1968. Thus on acquiring his B.A. decree he met the qualifications in Clause (iii) above and became a trained graduate teacher in the secondary school. The petitioner on the other hand joined as a trained graduate Assistant Teacher for the first time on 9/6/1969 i.e. about one year later. Clause (iii) above also protected the respondent no.2 as he had joined before 1st October, 1970 and the scheme for the qualifications as well as drawing seniority list of the teachers in the primary and secondary schools, in the Secondary School Code was on the same lines and

while drafting the M.E.P.S. Rules and more particularly the Schedule "B" it was retained as it is except for those who came to be appointed after the said Rules were brought into force. The learned counsel for the petitioner placed reliance on the guide-lines for fixation of seniority of teachers in the secondary school set out in Schedule "F" to the Rules of 1981 and submitted that in category "C" the respondent no.2 could enter only in the year 1971 or in the year 1973 i.e. after 10 years of post STC service. Note 1 in Schedule "F", which reads as under, is required to be considered:-

> "For the purpose of categories C, D, and E teachers with S.T.C., T.D., Jr. P.T.C. Dip. T., Dip.Ed., (post-S.S.C. one year course) qualifications appointed on or after 1st October, 1970 shall be considered as untrained and their seniority shall be fixed in the "F" or "G" category of untrained teachers, as the case may be."

10. This note, therefore, indicates that there was a distinction made amongst the teachers who obtained

S.T.C. qualifications prior to 1st October, 1970 and were in service and those who were appointed on or after 1st October, 1970. The petitioner is not the one who is covered by Note 1 and in any case much before the Rules of 1981 were brought into force, respondent no.2 was already a senior trained graduate Assistant Teacher to the petitioner by following the guide-lines as were set out in the Secondary School Code. The management was, therefore, right in its contention before the School Tribunal that the respondent no.2 was senior to the petitioner and was rightly promoted to the post of Head Master. Mr. Hazare is the party-respondent in this petition and in any case his claim to the post of Head Master cannot be adjudicated in this petition, more so when his dismissal of appeal attained its finality.

11. Consequently, this petition fails and the same is hereby dismissed. Rule discharged with no order as to costs.

(B.H. Marlapalle,J.)